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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA**

PROTON ASSOCIATES LLC, and  
SETH MILLER,

Plaintiffs,

vs.

AVELO, INC.,

Defendant.

Case No.: 2:25-cv-00856-JCM-BNW

**PLAINTIFFS' OPPOSITION TO  
DEFENDANT'S SPECIAL  
MOTION TO DISMISS COUNT IV  
OF THE COMPLAINT PURSUANT  
TO NEVADA'S ANTI-SLAPP  
STATUTE**

## OPPOSITION

After Defendant filed a Special Motion to Dismiss Count IV, Plaintiffs filed a First Amended Complaint that removes the single count targeted by Defendant’s Special Motion. Defendant’s Motion accordingly must be denied as moot because the amended complaint no longer contains the relevant cause of action, and the special motion thus targets a pleading that is “treated . . . as non-existent.” *Ramirez v. Cnty. of San Bernardino*, 806 F.3d 1002, 1008 (9th Cir. 2015) (citation omitted); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992), *as amended* (May 22, 1992) (“[A]fter amendment the original pleading no longer performs any function.”); *see also, e.g., Zimmerman v. PeaceHealth*, 701 F. Supp. 3d 1099, 1108 (W.D. Wash. 2023) (“The filing of an amended complaint generally moots a pending motion to dismiss.”); *Wagner v. Choice Home Lending*, 266 F.R.D. 354, 360 (D. Ariz. 2009) (“As both motions pertain to Plaintiff’s original complaint and Plaintiff has since filed an Amended Complaint, both Motions are now moot.”). Because Defendant’s special motion cannot be granted, Defendant is not entitled to any of the affirmative relief requested in the motion. *See* NRS 41.670(1) (allowing a defendant to recover attorney fees and costs only “[i]f the court *grants* a special motion to dismiss filed pursuant to NRS 41.660” (emphasis added)); *Padda v. Hendrick*, 136 Nev. 856 (2020) (noting that “the plain language of NRS 41.670(1) requires an anti-SLAPP motion to be granted before attorney fees and costs may be awarded under the statute” and holding fees not available where, as here, plaintiff voluntarily dismissed targeted claim).

Although Defendant’s Motion must be dismissed as moot because the targeted claim is no longer operative, Defendant’s special motion to dismiss the claim was without merit anyway because, among other reasons, Nevada law has not applied the absolute litigation privilege (which is the only ground Defendant advances in support of its contention that Plaintiffs could not show a probability of success on the merits of Count IV of the Complaint) “to interference with *existing* contractual relations,”

1 which is what was alleged in Count IV. *Treasury Sols. Holdings, Inc. v. Upromise,*  
2 *Inc.*, No. 3:10-CV-00031-LRH, 2015 WL 3902400, at \*2 (D. Nev. June 25, 2015)  
3 (emphasis added).

## 4 CONCLUSION

5 For the forgoing reasons, Defendant's Special Motion To Dismiss Count IV Of  
6 The Complaint Pursuant To Nevada's Anti-Slapp Statute, ECF No. 14, must be  
7 denied as moot.

8  
9 DATED June 25, 2025.

## 10 BRAVO SCHRAGER LLP

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 25th day of June, 2025, a true and correct copy  
**PLAINTIFFS' OPPOSITION TO DEFENDANT'S SPECIAL MOTION TO  
DISMISS COUNT IV OF THE COMPLAINT PURSUANT TO NEVADA'S  
ANTI-SLAPP STATUTE** was served via the United States District Court CM/ECF  
system on all parties or persons requiring notice.

By: /s/ Dannielle Fresquez  
Dannielle Fresquez, an Employee of  
BRAVO SCHRAGER LLP